IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

OP.No. 2391 of 2003(Y)

PETITIONERS:
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1. FOOD CORPORATION OF INDIA OFFICER'S ASSOCIATION, 16-20, BHARAKAMBA LANE, NEW DELHI-110 001, REP. BY ITS EXECUTIVE COMMITTEE MEMBER, SHRI.T. DAMODARAN NAMBIAR, ASSISTANT MANAGER (QUALITY CONTROL)FOOD CORPORATION OF INDIA RESI."USHUS", P.O.KOTTAPPALLY, VATAKARA, KOZHIKODE-673 542.

2. V. RAVINDRAN, ASSISTANT MANAGER (GENERAL), FOOD CORPORATION OF INDIA, REGIONAL OFFICE, KESAVADASAPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY JOINT SECRETARY TO GOVERNMENT, MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION, DEPARTMENT OF FOOD AND PUBLIC DISTRIBUTION, KRISHI BHAVAN, NEW DELHI-110 001.

2. FOOD CORPORATION OF INDIA, 16-20, BHARAKAMBA LANE, NEW DELHI-110 001, REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.JOHN VARGHESE, SCGSC
SRI.T.P.M.IBRAHIM KHAN, SC, FCI
SRI.P.S.SREEDHARAN PILLAI, SCGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P NO.2391/2003

ORDER IN C.M.P.NO. 4191/2003 IN OP NO.2391/2003

DISMISSED

21/3/2007 **SD/-ANTONY DOMINIC, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF LETTER NO.IR(S) 14-18/95 DATED 6.3.2000 OF THE MANAGER (P&IR) OF FOOD CORPORATION OF INDIA, NEW DELHI, ADDRESSED TO THE PRESIDENT OF 1ST PETITIONER ASSOCIATION.

EXT.P1(a): TRUE COPY OF THE RELEVANT EXTRACT OF MINUTES OF THE MEETING HELD ON 21.2.2000 ON THE AGENDA SUBMITTED TO THE CHAIRMAN BY THE 1ST PETITIONER ASSOCIATION.

EXT.P2: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER ASSOCIATION BEFORE THE 1ST RESPONDENT VIDENO.FCIOA/GS/38/2000 DATED 18.4.2000.

EXT.P3: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE RESPONDENTS ON 8.9.1999 ALONG WITH THE LIST OF POSTS SHOWING PRE-REVISED SCALE OF PAY.

EXT.P4: TRUE COPY JUDGMENT DATED 9.8.2000 OF THIS HON'BLE COURT IN OP NO.22796/2000.

EXT.P5: TRUE COPY OF ORDER NO.17-9/2000-FCI DATED 23.2.2001 PASSED BY THE 1ST RESPONDENT.

EXT.P6: TRUE COPY OF THE JUDGMENT DATED 9.8.2001 IN OP NO.12810/2001 OF THIS HON'BLE COURT.

EXT.P7: TRUE COPY OF THE REPRESENTATION DATED 29.9.2001 SUBMITTED BY THE 1ST PETITIONER ASSOCIATION TO THE 1ST RESPONDENT WITH COPY TO THE 2ND RESPONDENT.

EXT.P8: TRUE COPY OF THE MEMORANDUM SUBMITTED BY THE 1ST PETITIONER BEFORE THE RESPONDENTS ON 12.10.2001.

EXT.P9: TRUE COPY OF THE ORDER NO.17-9/2000-FCI DATED 28.1.2002 ISSUED BY THE DIRECTOR, FOOD CORPORATION OF INDIA, NEW DELHI.

EXT.P10: TRUE COPY OF THE JUDDGMENT DATED 13.3.2002 IN CCC NO.235/2002 OF THIS HON'BLE COURT.

EXT.P10(a): TRUE COPY OF THE WRITTEN SUBMISSION MADE BY THE FIRST PETITIONER ASSOCIATION BEFORE THE RESPONDENTS ON 3.5.2002.

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EXT.P10(b): TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER ASSOCIATION BEFORE THE 1ST RESPONDENT.

EXT.P11: TRUE COPY OF ORDER NO.17-9/2000-FCI DATED 26.9.2002 OF THE 1ST RESPONDENT.

EXT.P12: TRUE COPY OF ORDER DATED 20.4.2000 OF THE DIRECTOR, FCI (VIGILANCE) ADDRESSED TO THE 2ND RESPONDENT.

EXT.P13: TRUE COPY OF LETTER NO.18-5/99-FCI DATED 5.3.2001 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

EXT.P14: TRUE COPY OF THE MINUTES OF THE NINETY-NINTH BOARD OF DIRECTORS MEETING OF THE FOOD CORPORATION OF INDIA HELD ON 14.6.1976.

EXT.P15: TRUE COPY OF LETTER DATED 9.3.2001 ISSUED BY THE 1ST RESPONDENT TO THE EXECUTIVE DIRECTOR, FCI, NEW DELHI.

EXT.P16: TRUE COPY OF LETTER NO.17-9/2000-FCI DATED 16.7.2002 FROM THE 1ST RESPONDENT TO THE EXECUTIVE DIRECTOR (PERS.), FOOD CORPORATION OF INDIA, NEW DELHI.

//TRUE COPY//

ANTONY DOMINIC, J.
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O.P NO. 2391 OF 2003
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Dated this the 21st day of March, 2007

J U D G M E N T

This original petition is filed by the Food Corporation of India Officers' Association and a member of the said Association. Although several issues have been raised in the original petition, the point that was urged at the time of hearing is regarding the disparity in the pay scale provided for Assistant Managers in the FCI as compared to the Head Draftsman and Foreman in the FCI. It is stated that although the Head Draftsman/Foreman are reporting to Assistant Managers, on whose behalf this original petition has been filed, the Assistant Managers are getting lower pay as compared to the Head Draftsman and Foreman. It is seen from Ext.P11 that since 1/1/86, the pay scale of Assistant Managers was 2000-3500 and that following the recommendation of the Fifth Pay Commission, the same has been revised to Rs.6,500-10,500. It is also seen that the pay scales of Head Draftsman and Foreman was Rs.2,375-3,500 and that following the recommendations of the Fifth Pay Commission, the same has

been revised and fixed at Rs.7,450-11,500. Petitioners would contend that the extension of higher scale to those who are lower in rank is discriminatory and therefore are seeking a direction requiring the respondents to refix the pay scale as applicable to Assistant Managers in F.C.I.

2. In the counter affidavit filed by respondents 1 and 2 attempt has been made to justify the fixation of scale of pay as applicable to the aforesaid two categories. The main focus as seen from the counter affidavit is to justify it on the basis of historical reasons.

3. I have considered the submissions of both sides. It is submitted that prior to Fourth Central Pay Commission, these two categories of employees were drawing pay on a single scale of pay. It is seen that following the Fourth Central Pay Commission, a High Power Pay Committee was appointed w.e.f. 1/1/86 and it is on the basis of the recommendations of the said Committee that pay scales were revised. The revised scale of pay was Rs.2000-3500 for Assistant Managers and Rs.2,375-3,500 for Head Draftsman and Foreman . While the position continued as such for the whole period, the Fifth Central Pay Commission was

appointed, based on the report of the said Commission, pay was revised and the revised pay fixed for Head Draftsman and Foreman was in the scale of pay of Rs.7,450-11,500 and in so far as Assistant Managers are concerned, the scale of pay fixed was Rs.6,500-10,500

4. The plea of the petitioners seem to be more in the region of equal pay for equal work. It is settled law that challenge to the pay structure or challenge to a scale of pay can be sustained only on strong grounds. It is for the petitioners to make out a case explaining the difference in the nature of duties, the responsibilities that are shouldered, the difference in qualification etc., to sustain a plea in this regard. From the material available, though scanty, it is evident that the fixation of pay was done based on the report of High Power Pay Committee and the Central Pay Commissions, consisting of experts who have had the benefit of perusing relevant materials, unlike this Court, which has only affidavits sworn to by parties. I have no reason to think that such valid factors, as highlighted by the Supreme Court in various decisions touching on the subject, have not been adverted to while these experts have recommended the pay scales as

applicable to these categories of employees.

5. Thus in the absence of any compelling reasons and due to dearth of materials, I am not in a position to accept the plea of the petitioners. That apart, this is a system which is prevailing since 1/1/86 and upsetting this at this distance of time can only play havoc in the administration, which I am unwilling to do. Therefore, I see no merit in the contention of the petitioners that their pay has to be revised and brought above the pay that is now paid to Head Draftsman and Foreman.

6. I also notice that while in the pleadings and in the case argued before the respondents resulting in Ext.P11, what the petitioners canvassed was for parity with the Head Draftsman and Foreman. In the writ petition filed, the prayer is for parity with Technical Officers/Assistant Development Officers in the Ministry of Agriculture. In so far as the parity so claimed by them is concerned, I should mention that parity can be claimed with an employee within the organisation and not with an outsider. Here for that reason itself, the parity claimed by the petitioners with their so called counterparts in the Government of India cannot be granted. Equality can be claimed only against a person similarly

situated and the comparison can only be with another employee of FCI only.

7. The other complaint raised by the petitioners as contained in ground H of the original petition is regarding lack of avenues of promotion and the consequent stagnation. It is not their case that there is total lack of avenues, but the complaint seems to be that there are only inadequate avenues resulting in stagnation. This is a matter for the authorities to consider and redress and the Court cannot step in and compel the authorities to frame rules providing for avenues of promotion or avenues for advancement in their career to the satisfaction of all concerned.

For the aforesaid reasons, I see no merit in this original petition and it is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp